

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

KINGSPORT POWER COMPANY

Employer

and

Case 10-UC-222

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL #934,  
AFL-CIO, CLC

Union-Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Kingsport Power Company, herein called the Employer, is a corporation engaged in the transmission and distribution of electrical power in east Tennessee. During the past 12 months, the Employer received gross revenues in excess of \$250,000. During this same period, the Employer purchased and received goods and services at its east Tennessee location valued in excess of \$50,000 directly from suppliers located outside the State of Tennessee. Accordingly, the Employer is

---

<sup>1</sup> Briefs filed by the Employer and the Union-Petitioner have been duly considered.

engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

3. The Union-Petitioner, herein called the Union, seeks to clarify the existing bargaining unit by including the classification of Transmission and Distribution Clerks (hereafter T&D Clerks). The Union contends that the duties of this position changed when the Employer eliminated the unit position of Service Clerk in August 2001 following the transfer of the Service Clerk's dispatching functions to a regional Distribution Dispatch Center ("DDC"). The Employer contends that the duties of the T&D Clerk position have not substantially changed since the Union was certified in 1970, that historically the T&D Clerks have been excluded from the unit, and that the six such clerks presently employed should therefore continue to be excluded. The Employer also argues that the petition should be dismissed because it was untimely filed during the term of the collective bargaining agreement, which is effective from April 1, 1999 through March 30, 2002.

In successive collective bargaining agreements, the Union has been recognized by Kingsport Power Company, a subsidiary of American Electric Power ("AEP"), as the exclusive representative for the purposes of collective bargaining for all of the regular production and maintenance employees employed by Employer at its Kingsport, Tennessee location, including specifically the general servicers, line mechanics and service clerks in the Line and Service Department; the station mechanics in the Station Department; the measurement electricians in the Measurement Department; the meter readers in the Meter Reading Department; the auto mechanics in the Transportation Department; and the store attendants in the Stores Department. "Specifically excluded" from the unit are "all probationary, temporary, part-time, confidential, office clerical, technical, professional and administrative employees, custodians at the main office building, working supervisor, and other supervisors as defined by the National Labor Relations Act and all other employees."

There are a total of about 23 employees in the bargaining unit. In the early 1990's there were two Service Clerks, but since about September 1995, there has been only one, on day shift. Historically, there have been varying numbers of T&D Clerks, although they have sometimes worked in outlying offices

rather than the main Kingsport office where the represented employees are located. However, at least as of October 1998, prior to negotiation of the current collective bargaining agreement, there were three Kingsport District T&D Clerks in the main office. At the time of the elimination of the Service Clerk position in August 2001, following consolidations and transfers, there were six T&D Clerks located in the Kingsport office. Two of these worked in the same office area as the Service Clerk and the other four in another area of the same building. These are the six T&D Clerks the Union seeks to include in the unit through this unit clarification proceeding.

Both Service Clerks and T&D Clerks perform a variety of duties. However, the Service Clerks deal primarily with communications with the field, dispatching, and trouble calls, while the T&D Clerks deal primarily with records, work orders for new or upgraded service and time sheets. Before the Service Clerk job was eliminated, there was cross training between these two clerk positions to provide coverage during absences. Thus, when the Service Clerk was on break or out, her duties were performed by the T&D Clerks, especially by the clerk who had worked in the same office for several years. Both classifications had access to the same computer system, worked with similar equipment, earned comparable wages, enjoyed the same break facilities and, to some extent and at various times, had common supervision. Based upon such facts, the Union makes a community of interest argument that the T&D Clerks, like the Service Clerk, are plant clericals, not office clericals as contended by the Employer. Therefore, the Union asserts, the T&D Clerks should be included in the unit.

However, a community of interest argument of the kind that might be made in a representation case proceeding establishing the appropriate unit for an election is insufficient to support a unit clarification petition. “The Board has traditionally held that a unit clarification petition submitted during the term of a contract specifically dealing with a disputed classification will be dismissed if the party filing the petition did not reserve its right to file during the course of the bargaining. Wallace-Murray

Corp., 192 NLRB 1090 (1971).<sup>2</sup> As was stated by the Board more recently in Edison Sault Electric Company, 313 NLRB 753 (1994), "[T]he Board's rule is based on the rationale that to entertain a petition for unit clarification during the midterm of a contract which clearly defines the bargaining unit would disrupt the parties' collective bargaining relationship." In effect, the Board has refused to permit a party, through a unit clarification petition, to effect a change in the composition of a bargaining unit during the contract term after that party has already agreed to the unit's definition. San Jose Mercury & San Jose News, 200 NLRB 105, 106 (1972); Monongahela Power Co., 198 NLRB 1183 (1972).

Here, the T&D Clerk position has historically been excluded from the unit. Whether this exclusion has been because they are "office clericals" or because they are excluded under the rubric of "all other employees" is immaterial for present purposes. Given their historical exclusion, even viewing the "community of interest" argument most favorably to the Union, the

T&D Clerks cannot be accreted to the unit absent a substantial change in the position since the contract was negotiated. I find, however, that no showing of substantial change has been made.

In August 2001, after the current contract was negotiated, the sole Service Clerk position was eliminated. The Union contends that as a result, the six T&D Clerk positions changed as these employees assumed some of the Service Clerk duties. There are some differences between the parties regarding their estimates of the precise percentage of time involved in the various duties performed by the Service Clerk, but it is undisputed that the most substantial part of her job, dispatching, was transferred to the DDC office in Virginia, not to the T&D Clerks. It is also undisputed that many of the Service Clerk's other duties are now performed by management.<sup>3</sup> According to the Employer, the only change in the T&D Clerk position as a result of the elimination of the Service Clerk job is that the T&D Clerks no longer

---

<sup>2</sup> See also St. Francis Hospital, Inc., 282 NLRB 950 (1987). In other limited circumstances the Board will entertain a unit clarification petition shortly after a contract is executed, provided that the petitioner raised the issue in the negotiations and did not abandon its request in exchange for some concession in negotiations. *Id.* at 951.

<sup>3</sup> Additionally, changed procedures have eliminated the need for anyone to perform some duties.

have to fill in for dispatch or other Service Clerk functions during the Service Clerk's breaks and absences since this work is now done in Virginia. However, even assuming that the six T&D Clerks continue to perform a limited portion of the one Service Clerk's former duties, such as overflow dispatch work during storms or if the Virginia DDC is "covered up," this would not suffice to warrant clarifying the unit to include the T&D Clerks. In fact, such clarification would be especially inappropriate since the T&D Clerks were performing some dispatching and other Service Clerk duties prior to the negotiation of the latest contract, and no party contends the issue was addressed or reserved during negotiations.

Unit clarification "is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees . . . ." Union Electric Co., 217 NLRB 666, 667 (1975) (emphasis added). Elimination of the Service Clerk classification is, of course, a "substantial" change for the person holding that position and for the union representing the classification, but this is not the change that matters for present purposes. What matters is whether there have been recent, substantial changes in the T&D Clerk classification. I find, however, that any recent changes to this classification have been insufficiently substantial to warrant the accretion of six positions to the unit when most of the remaining duties of the one eliminated unit position have been assumed by a separate Center, or by management and others not at issue here.

I therefore deny the Union's request to clarify the unit to include the T&D Clerks. Accordingly, I shall dismiss the Union's unit clarification petition.

### **ORDER**

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by November 23, 2001.

Dated at Atlanta, Georgia, on this 8<sup>th</sup> day of November, 2001.

/s/ Martin M. Arlook  
Martin M. Arlook, Regional Director  
Region 10  
National Labor Relations Board  
Harris Tower – Suite 1000  
233 Peachtree St., N.E.  
Atlanta, Georgia 30303-1531

385-7533-2020-4100